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FEDERAL COMMUNICATIONS COMMISSION

JUL 12 1996

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OFFICE OF SECRETARY

In Re Applications of:)
WKZF-FM, INC.) MM Docket No. 96-110
For Renewal of License for)
Station WKZF(FM),) File No. BRH-950814UC
Bayboro, North Carolina)

Volume: 2
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Date: June 28, 1996

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 12 1996

In Re Applications of:

WKZF-FM, INC.

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Station WKZF(FM),
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Courtroom 4
FCC Building
2000 L Street, N.W.
Washington, D.C.

Friday,
June 28, 1996

The parties met, pursuant to the notice of the
Judge, at 9:00 a.m.

BEFORE: HON. JOHN M. FRYSIK
Administrative Law Judge

APPEARANCES:

On behalf of Federal Communication Commission:

ALAN ARONOWITZ, ESQUIRE
ROBERT ZAUNER, ESQUIRE
Mass Media Bureau
Federal Communication Commission
2025 M Street, Northwest
Washington, D.C. 20554
(202) 418-1430

On Behalf of the Licensee:

RICK D. RHODES, ESQUIRE
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, Northwest
Washington, D.C. 20036-3101
(202) 728-0400

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
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None.

E X H I B I T S

<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
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None.

Hearing Began: 9:00 a.m.

Hearing Ended: 9:35 a.m.

1 P R O C E E D I N G S

2 JUDGE FRYSIK: Good morning all.

3 This is a further prehearing conference for WKZF-
4 FM, Docket No. 96-110.

5 Let me note your appearances for the record,
6 please.

7 MR. RHODES: Rick Rhodes of Irwin, Campbell &
8 Tannenwald for WKZF-FM, Incorporated.

9 MR. ARONOWITZ: And Alan Aronowitz and Bob Zauner
10 for the FCC, Bureau counsel.

11 JUDGE FRYSIK: Okay, Mr. Aronowitz, you called
12 for this further prehearing conference.

13 MR. ARONOWITZ: Thank you, Your Honor, and thank
14 you for hearing us in an expeditious manner.

15 At the last prehearing conference counsel
16 suggested that the renewal applicant might require the grant
17 of a modification application to demonstrate its ability to
18 return the station to the air.

19 At that time we noted for the record that we as
20 the Bureau had no guarantees that such an application would
21 be processed or, in fact, even accepted. And the reason
22 that we asked for this further prehearing is to clarify on
23 the record that it's the Bureau's position that any post-
24 designation modification application will not be processed,
25 will not be processed.

1 So in order to clarify that we wanted to bring
2 that to your attention and to counsel's attention as soon as
3 practical so that we can give the renewal applicant every
4 opportunity to deal with this with no false hope that the
5 modification application would be processed at this time.

6 MR. RHODES: May I ask a question?

7 JUDGE FRYSIK: Sure.

8 MR. RHODES: I would like to make certain that I
9 understand what you are telling me.

10 What you are telling me is that after the date of
11 the hearing designation orders issuance that any application
12 for modification by the applicant will not be processed;
13 that the Bureau us saying we simply won't process that
14 application; is that correct?

15 MR. ARONOWITZ: That's correct.

16 MR. RHODES: May I have a few minutes to respond?

17 JUDGE FRYSIK: Sure.

18 MR. RHODES: If what I am hearing, and I
19 understand what I am hearing, I don't think that a refusal
20 to process the application outright is a defensible position
21 on legal grounds, equitable grounds or on grounds of the
22 public interest.

23 I think that from the legal standpoint we have a
24 public notice that was issued by the Commission earlier that
25 said that when a station that was silent filed an

1 application to get some sort of change or whatever they
2 needed, that the Bureau would take steps to expedite the
3 processing of that application, to help the station get back
4 on the air in an expeditious manner.

5 Additionally, not only on the basis of reliance by
6 licensees across the country who may be silent on this
7 notice that they would get some help from the Bureau in
8 getting whatever help the needed from the Bureau to get back
9 on the air as quickly as they could, this is contrary to
10 precedent.

11 The Commission in numerous cases over the years,
12 and I will be glad to provide a bench memorandum if you
13 think it would be helpful on this point, has tried to take
14 steps to help licensees who were struggling to get back on
15 the air. There is a long line of cases in which stations
16 have had quite extended periods of time, and the Commission
17 has been helpful in trying to help them get back on the air.

18 Additionally, there is a line of cases in which
19 the Commission has tried to take steps to help broadcasters
20 get the stations back on the air when there were innocent
21 creditors involved. And here we do on the facts of this
22 case have some innocent outside creditors who helped put
23 money up to help get this station going, and who now would
24 lose all their investment, and they are innocent outside
25 creditors.

1 Additionally, it's simply an inconsistent position
2 because there are several other silent stations across the
3 country that haven't been designated for hearing. Under the
4 law, Communications Act of 1996, they would get until
5 February, if they haven't been designated for hearing, to
6 get their houses in order and to get back on the air.

7 Based on the date of the hearing set here, we
8 would only have until October. That is an inconsistent
9 position between similarly situated licensees.

10 Additionally, outside of the fact that it's an
11 indefensible legal position for the Bureau not to try to
12 help licensees to get the assistance they need with
13 application processing to get on the air, on the facts of
14 this particular case, this flies in the face of the equities
15 of the situation, this particular position of the bureau.

16 Here, the licensee is a small business entity.
17 They have been a short termer, if you will, with respect to
18 this particular station. They only got this license about
19 15 months ago on a transfer. The station was silent at the
20 time because the previous licensee had financial
21 difficulties.

22 Our licensee, wanting to see the station back on
23 the air, serving the local community, and wanting to make
24 something happen with the station, took the station, assumed
25 its debt, and then set about trying to find adequate

1 financing to help them get the station back on the air.

2 They did this expeditiously.

3 They found a way to get around their financial
4 difficulties. They found a way to get some financial
5 assistance, and just as soon as they had the money and the
6 wherewithal to do that, they immediately started looking at
7 the most expeditious way to get the station back on the air.
8 Within five months after they got the license and got their
9 financial problems settled, they went to a consulting
10 engineer. That consulting engineer has finished studies
11 which would allow them to put the station on the air on a
12 preexisting tower.

13 Now, they would have to put that station on the
14 air on this preexisting tower at a location a couple of
15 miles away from their original coordinates. However, in
16 order to do that they also would need to use an erectional
17 antenna to protection another station. The engineers have
18 finished the initial studies. It will work. The
19 engineering studies have been finalized.

20 Now, the consulting fabricators of the antenna are
21 working on building the model towers that will have to be
22 made and tested to make sure that the pattern works. That
23 would be finished probably within another three weeks or so.

24

25 Once that is done we are talking only 60 to 90

1 days for shipment from the factory. Even though this is a
2 fairly sophisticated directional antenna, it would be
3 available, and this station, if the Commission would simply
4 sit back and do what it has said it would do in the past and
5 what its precedent has shown that it would do in the past,
6 and would try to give the station the benefit of the doubt
7 in giving it the modification, the minor modification that
8 it needs in an expeditious manner, the station will get on
9 the air.

10 If the Commission would grant an application, the
11 station would be placed on the air within a few weeks after
12 that grant. They have spent the money to do what was needed
13 to do to get an erectional study completed, and it is just
14 about ready to go. It just seems that the Commission has
15 been informed that this station was off the air. The
16 licensee has taken active steps to try to get it back on the
17 air, has spent money to do that.

18 And, in fact, the other thing that enters into
19 this is that this is really the most expeditious way the
20 licensee could find to get back on the air, because with
21 construction of a tower at the original location -- because
22 the earlier tower has been taken do -- to construct a new
23 tower, to get through the zoning, to do whatever else would
24 have to be done with site preparation and getting it up,
25 would be quicker to simply use the preexisting tower that's

1 there, and serve the public interest by us getting on
2 faster.

3 Number two, it will save money that the licensee
4 could use to put back into community programming once the
5 station is on the air, and that's always a consideration, we
6 believe.

7 Number three, by moving with the directional
8 pattern, the station will be able to actually serve more
9 people in this county than it would have from the original
10 site. That's got to be taken into account as well.

11 This is the best possible solution to getting this
12 station on the air, and the only thing required to do that
13 is a reasonably expedited Commission action on its minor
14 modification application.

15 So from a legal and an equitable standpoint, the
16 Bureau's decision not to process this application is simply
17 wrong.

18 Lastly, from the public interest standpoint, it's
19 worth noting that the town that this station is authorized
20 to is Bayboro, North Carolina. It's a small town. The
21 county is rural. It's in the extreme eastern end of the
22 state and abuts the Salt Water Bay. The county population
23 is probably under 20,000, as I recall, from the last
24 population count. The entire county has one small station
25 serving the northern section of the county from the town of

1 Oriental. Bayboro, the county seat where all the county
2 government offices are located, and where the county
3 business takes place, has no station whatsoever.

4 The county is rural. It has no local service from
5 that particular city; that is, Bayboro. Most of the people
6 who live there are either fishermen, shrimpers, small
7 farmers. The county is plagued with educational, health and
8 severe economic problems. It has a substantial African-
9 American population. There are real problems in that
10 county.

11 As a former broadcaster myself in small and medium
12 markets, I have seen the positive effects in a community
13 that can come up when a local broadcaster cares, can
14 galvanize the community, help bring it together and get
15 people working to help solve their problems.

16 If we don't give this station a chance to get on
17 the air, we are not going to do anything but hurt the public
18 interest and the people of Bayboro and Pamlico County.

19 I know that the people in that county would
20 welcome having a local radio voice in that city. And the
21 reason that I am familiar with that area, it might be noted,
22 is that I am from that area. I was born and raised and grew
23 up in a location about 10 miles away from the coordinates at
24 which this licensee wants to move.

25 My family still lives there. Most of the people

1 in the county that would be affected by this station are
2 people that I know. If there was ever a case in which the
3 equities, the public interest, as well as legal precedent
4 calls out for the Bureau to reverse its position and to
5 grant expeditious process into an application this is the
6 one.

7 I would like to, if granted an opportunity, make a
8 motion that Your Honor please go ahead and grant the renewal
9 of the license subject to a condition that if the station is
10 not on the air in accordance with the Communications Act of
11 '96, by February 7th, the license would be revoked. Or
12 alternatively, that the date for the hearing be set back to
13 early February so that we could have time to try to get to
14 the Commission, get a reversal on this lack of processing
15 position, and get the station on the air, and we will do it
16 and do it expeditiously, and serve the public interest.

17 We would also request if Your Honor believes that
18 the discretion is there, that Your Honor order the Bureau to
19 cooperate with us in expeditiously reviewing this
20 application because our engineers tell us it will fit and
21 that we will be able to serve more people and the public
22 interest will be served.

23 We are only asking that we be treated the same way
24 as the other silent stations across the country that haven't
25 been designated for hearing. The equities, the public

1 interest, the facts and legal precedent in this case compel
2 that we be given one of those alternatives; that you would
3 either set the date of the hearing back and give us
4 sufficient time to prosecute our application and to get the
5 station on the air, or that you grant the license with a
6 condition.

7 JUDGE FRYSIAK: All right, thank you, Mr. Rhodes.
8 Mr. Aronowitz, do you have any response?

9 MR. ARONOWITZ: Yes, I do, Your Honor.
10 First of all, with respect to public notice on
11 silent stations, giving them until February '97, February
12 8th or 9th, I'm not sure of the exact date.

13 MR. RHODES: Yes, February '97.

14 MR. ARONOWITZ: That is not applicable in this
15 case inasmuch as this has already been designated. And even
16 the public notice does not grant automatic extensions of
17 authority. One still has to have a valid authorization to
18 go through February of '97. But that's just one point.

19 What we have -- with respect to the efforts of
20 this licensee as recounted by Mr. Rhodes, those are
21 certainly matters that would be ripe for exploration at
22 hearing, to determine whether the efforts of the licensee
23 were reasonable or dilatory in terms of their predesignation
24 efforts to return the station to the air.

25 We have a hearing date and we can explore those

1 issues at that time.

2 JUDGE FRYSIAK: Do you have authority for your
3 position that you won't process that application or post-
4 designation modification?

5 MR. ARONOWITZ: Well, this is the Bureau's policy.

6 JUDGE FRYSIAK: I am talking about a rule of the
7 Commission.

8 MR. ARONOWITZ: No.

9 MR. RHODES: When was this policy announced, if I
10 might ask, or made public because it's contrary or appears
11 contrary to the --

12 MR. ARONOWITZ: Well, that's --

13 MR. RHODES: And I think this notice was issued
14 before the hearing designate order, wasn't it?

15 MR. ARONOWITZ: That I don't know. Nevertheless,
16 that does not -- you know, it's the Bureau's position that
17 that does not -- that that public notice doesn't apply to
18 this case, and that this is in fact just a clarification of
19 our policy. This is not a new policy. It's just a
20 clarification of the public notice with respect to the
21 designated cases.

22 MR. RHODES: Well, at the time --

23 JUDGE FRYSIAK: Well, Mr. Rhodes' position, I
24 think, is that he has not been put on notice that this would
25 be the case; that he would not be allowed to submit a post-

1 designation modification.

2 MR. ARONOWITZ: Well, that's why when Mr. Rhodes
3 brought that up at the last prehearing conference, that's
4 why we suggested that we wouldn't guarantee that it would be
5 processed, and that's why we are here to clarify that today.

6 JUDGE FRYSIK: Well, okay, just to get a clearer
7 picture.

8 You are suggesting that we go through with the
9 hearing as indicated in the hearing designation order, and
10 that this then would resolve, perhaps resolve a quandary
11 that the applicant is in; is that right?

12 MR. ARONOWITZ: Yes, Your Honor.

13 JUDGE FRYSIK: Well, what guarantee does he have
14 that he would then be able to make modifications?

15 MR. ARONOWITZ: Well, if it is determined that
16 after hearing the result of their efforts to return the
17 station to the air, pre-designation efforts to return the
18 station to the air, and presuming those were not -- that
19 those efforts did not amount to dilatory conduct, at that
20 point with an ability to return to the air and a
21 determination that its efforts were reasonable, then at that
22 point the renewal application would presumably be granted
23 and at that point a modification could be expeditiously
24 sought.

25 JUDGE FRYSIK: How much time elapsed before the

1 transfer that you referred to, Mr. Rhodes?

2 MR. RHODES: The --

3 JUDGE FRYSIK: And the time that the previous
4 owner went silent.

5 MR. RHODES: The previous owner went silent in mid
6 1994, as I recall, or late '94. I don't have the order in
7 front of me. But the -- the licensee of the station
8 currently picked the station up through purchase and
9 consummated that transaction in March of 1995.

10 Now, by September of that same year, the financial
11 issues that came up immediately after the transfer to make
12 sure there was money to get the station back on the air and
13 operating, from March to September -- yes, late March is
14 when the assignment was consummated to this licensee. By
15 mid September the consulting engineers had been engaged. I
16 have a letter to that effect with me that shows that they
17 began studies around that time frame to try to see if this
18 directional pattern could be used, and to see if an
19 application could be prepared to operate the station with
20 the directional antenna.

21 So within five months of this licensee picking up
22 the station, even though it was silent at the time, the
23 wheels were put in motion to get the station on in the new
24 configuration to serve a greater public.

25 MR. ARONOWITZ: Your Honor, when this licensee

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1 assumed control of the station, and I am going now from the
2 hearing designation order, the Bureau approved -- the Bureau
3 approved the licensee's request to extend time to construct
4 the station and conditioned the assignment to require
5 operations with 240 days of the date of consummation. They
6 had until November 1995 right off the bat to deal with this
7 engineering quandary.

8 So it's not --

9 JUDGE FRYSIK: The sale took place after --

10 MR. ARONOWITZ: The same was consummated,
11 according to the hearing designation order, the sale was
12 consummated on February '95.

13 MR. RHODES: And notification in March of '95 that
14 the assignment had been finalized.

15 MR. ARONOWITZ: Right.

16 MR. RHODES: That's correct.

17 MR. ARONOWITZ: And what happened was when the
18 application was originally granted in December of '94, the
19 licensee -- that grant was conditioned upon the new licensee
20 resuming operations within 60 days of the consummation of
21 the approved assignment.

22 After the -- after this renewal applicant notified
23 the Commission of the consummation of the transaction, the
24 Bureau approved the licensee's request to further extend the
25 time to begin operations to November 20, 1995.

1 MR. RHODES: That is correct.

2 And in the interim, in the interim period --

3 MR. ARONOWITZ: Oh, excuse me, and it's been off
4 the air without authority since.

5 MR. RHODES: Since. In the interim period the
6 applicant filed well before expiration of that November 20th
7 deadline for remaining silent, in fact, on August 14th of
8 '95 WKZF, Incorporated, filed an application for renewal
9 with the Commission and stated in that application that it
10 was still off the air, and was currently developing
11 engineering to try and get back on the air.

12 Now, granted that's not a perfect response, but we
13 are not dealing with a large broadcasting corporation here
14 either. We are dealing with a small broadcaster and a small
15 market. And they didn't have counsel at that time due to,
16 again, the financial considerations.

17 We have recently been brought in to assist in this
18 matter, and I would submit to you that the statement made to
19 me by the licensee is that perhaps we were not terribly
20 sophisticated in getting a separate letter in to get the
21 Commission to extend our time off, but we didn't try to play
22 a game of hide the ball, and we clearly stated what was
23 going on in our license renewal application, and believe that
24 to be an adequate disclosure to the Commission.

25 Again, here when you look at it and take in the

1 totality of the circumstances, it appears that the licensee
2 was clearly making an effort to get the station back on the
3 air in the timeliest way it knew how, and keep the
4 Commission apprised of what was going on.

5 MR. ARONOWITZ: Excuse me, Your Honor. What we
6 are going to do, as we are going down this road, is argue
7 the case that we will be arguing in November, or September,
8 excuse me, at the beginning of October is our hearing date.
9 Excuse me.

10 The fact of the matter is this station has been
11 off the air since November of '95 without authority, as I
12 understand it, and such conduct would appear to be dilatory
13 conduct. I mean, we are sitting here sometime later. These
14 are the matters -- we shouldn't be arguing about this now.

15 JUDGE FRYSIK: Right. And the problem is that
16 if he shows that he was not dilatory and he shows that he
17 has the capability of putting the station on the air, he
18 still doesn't know whether he will be allowed to make a
19 modification take effect.

20 Do you see?

21 MR. ARONOWITZ: No, I don't.

22 JUDGE FRYSIK: We may be just going through an
23 empty exercise if he does -- if your position is that you
24 will not process a modification, then no matter what he does
25 with this hearing designation order, he doesn't resolve your

1 policy.

2 MR. ARONOWITZ: No, Your Honor. If it is as, and
3 I hope that I have been -- I hope I am not unclear about
4 this.

5 (Pause.)

6 MR. ARONOWITZ: Your Honor, it is our
7 understanding that if the applicant meets the issues with
8 respect to its conduct being reasonable or not dilatory and
9 the renewal applicant has a valid plan to return the station
10 to the air, reasonable plan to return the station to the
11 air, at that point the applicant would merit a grant of the
12 renewal, and at that point its modification would be
13 processed. That is our understanding.

14 This applicant will not be foreclosed from filing
15 a renewal application -- excuse me -- a modification
16 application once it meets the issues with respect to its
17 plan and its predesignation conduct.

18 JUDGE FRYSIAK: Well, are you satisfied with that?

19 MR. RHODES: With all due respect, Your Honor, and
20 again with all due respect to counsel for the Commission,
21 that doesn't give us very much hang our hat on really. I
22 mean, we had a policy earlier that said we will do
23 everything we can to help you expedite an application, and
24 then the Bureau decides not to process them.

25 For counsel to tell us, granted on the record,

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1 that if we were to prevail at a hearing, that we would then
2 have to have our application processed doesn't give us a
3 level of security that makes us feel we should be here.

4 JUDGE FRYSIAK: Well, the problem that I have is
5 that his present application has to be on the previous plan
6 which he can't proceed because he has got to go on a
7 modified plan. So you are putting him into a position where
8 he has got to apply for -- on a position that he doesn't
9 accept, he cannot accept.

10 Does that present any problems?

11 MR. ARONOWITZ: Your Honor, I mean, the licensee
12 placed themselves in this position, and that may be because
13 of its own deleterious conduct with respect to its efforts
14 to return the station to the air.

15 Your Honor, in this situation where the licensee
16 has been off the air since November '95, without authority,
17 you know, at this point the Bureau's position would be that
18 there have been plenty of opportunities for the licensee to
19 take steps prior to designation to do something here. In
20 fact, the post-designation efforts to build do not -- are
21 not relevant to its predesignation conduct.

22 JUDGE FRYSIAK: Well, does it present -- in this
23 particular situation does it present -- does it preclude the
24 applicant from being successful when he has changed his
25 plans?

1 It doesn't have the original plans going into
2 effect.

3 MR. ARONOWITZ: Well, not necessarily, Your Honor,
4 and without arguing that point now, if in fact the
5 licensee's conduct does not amount, or the licensee's
6 efforts predesignation does not amount to dilatory conduct,
7 then they have a viable plan now that presumably the
8 applicant would be deserving of renewal, and upon grant the
9 modification would be accepted and processed.

10 I mean, their post-designation effort does not
11 address the predesignation conduct, or predesignation
12 efforts.

13 MR. RHODES: We don't think there was wrongful
14 conduct before the predesignation or before the designation
15 order --

16 MR. ARONOWITZ: And that's what the hearing is all
17 about.

18 MR. RHODES: Understood. But we think that,
19 again, efforts were made, maybe dealing with an
20 unsophisticated licensee, but we're not asking for anything
21 the Commission hasn't clearly given to other licensees in
22 the past. And, again, we are seeing a policy shift here
23 that we didn't have notice of. We also see that the
24 licensee has made an effort in its own way to inform the
25 Commission as to what was happening and to continue to make

1 things happen to get this license, or, rather, to get this
2 station up and on the air, and that its conduct was not
3 dilatory in any way, shape or form. It was doing the very
4 best it possibly could under the circumstances.

5 JUDGE FRYSIAK: Well, that's a question of fact
6 that has to be determined.

7 MR. RHODES: And I understand that, Your Honor.

8 All things considered, though, again, we think
9 that this position of not processing an application for a
10 modification is basically indefensible in that it, again is
11 something that the Bureau is singling out, maybe a few
12 licenses for, when the others would have until February.
13 And if the Bureau would under its normal processing times,
14 according to the notice of about four months from minor
15 modification applications, if the Bureau would simply
16 process it on its regular time table without expedited
17 process, and we could have until February, we will have the
18 application filed next week anyway.

19 And if the Commission would simply process it in
20 the normal course and not grant it special expedited
21 consideration, but would just take it as a normal
22 application from a normal applicant trying to get on, and
23 process it, we would be on the air well before February. We
24 would probably be on the air, if the application were filed
25 next week, in early July, July, September, October, if we

1 could get a grant in November, we would be on the air before
2 December. We can do it that quickly.

3 And we are not asking for anything that other
4 silent stations aren't getting. This policy shift on not
5 processing a modification application period from - for a
6 few limited stations that have been -- I don't know how it
7 picked, maybe at random, but picked to be the targets of
8 hearing orders is just totally indefensible from a legal
9 position. It doesn't give the same treatment to similarly
10 situated licensees, and it doesn't support the public
11 interest.

12 JUDGE FRYSIK: Well, the fact of the matter is,
13 Mr. Rhodes, is that you have the assurance from the Bureau
14 that proceedings pursuant to the hearing designation order,
15 you will be allowed if you are successful, that you will be
16 allowed to modify the present plans of the licensee.

17 Do you follow?

18 MR. RHODES: I follow, but I also think that if we
19 could simply set the hearing back and get reasonable
20 processing of our application, the station would get on, it
21 would serve the public interest, and there would be no need
22 for going through the hearing and burdening the Commission's
23 resources with another case to review when on the facts
24 presented we could clearly get on the air quickly.

25 MR. ARONOWITZ: By the same token, we could move

1 the hearing up and try these issues and get those resolved
2 in time for -- should the be favorable to your client -- to
3 resolve these issues and not wait until October to do it,
4 and that would -- and if successful, the modification
5 application would then be able to be tendered. Move the
6 hearing up.

7 MR. RHODES: I would certainly have to consult
8 with my client before saying yes or no to that particular
9 scenario.

10 But I think that all things considered, that the
11 Bureau should reconsider what it's doing. It's an
12 inconsistent and indefensible position. And I truly believe
13 that the -- that in order for the Bureau to do what is
14 legally proper and also to serve the public interest, the
15 best thing that could be done would be for the Court here to
16 either set the hearing date back and to give the Bureau a
17 chance to reconsider its position, and for us to try to work
18 with the Bureau to get reconsideration on this particular
19 case, or alternatively, to go ahead and grant the renewal so
20 that we can then go in and immediately file the application,
21 and again we will get on.

22 JUDGE FRYSIK: Well, I can't do it without
23 resolving the issues presented in the designation order.

24 MR. RHODES: If I were to file a written motion,
25 would it be possible for Your Honor to rule on this matter